

**HEARINGS THAT CONCERN THE ISSUANCE OF PERMITS
BY A GROUNDWATER CONSERVATION DISTRICT****CHAPTER 405**

H.B. No. 2179

AN ACT**relating to hearings that concern the issuance of permits by a groundwater conservation district.***Be it enacted by the Legislature of the State of Texas:***SECTION 1.** Section 36.403, Water Code, is amended to read as follows:

Sec. 36.403. SCHEDULING OF PUBLIC HEARING. (a) The general manager or board may schedule a *public* hearing on permit or permit amendment applications received by the district as necessary, as provided by Section 36.114.

(b) The general manager or board may schedule more than one application for consideration at a *public* hearing.

(c) A *public* hearing must be held at the district office or regular meeting location of the board unless the board provides for hearings to be held at a different location.

(d) A *public* hearing may be held in conjunction with a regularly scheduled board meeting.

SECTION 2. Sections 36.404(a) and (d), Water Code, are amended to read as follows:

(a) If the general manager or board schedules a *public* hearing on an application for a permit or permit amendment, the general manager or board shall give notice of the hearing as provided by this section.

(d) A person may request notice from the district of a *public* hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a *public* hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.

SECTION 3. Section 36.405, Water Code, is amended to read as follows:

Sec. 36.405. HEARING REGISTRATION. The district may require each person who participates in a *public* hearing to submit a hearing registration form stating:

- (1) the person's name;
- (2) the person's address; and
- (3) whom the person represents, if the person is not there in the person's individual capacity.

SECTION 4. Subchapter M, Chapter 36, Water Code, is amended by adding Section 36.4051 to read as follows:

Sec. 36.4051. BOARD ACTION; CONTESTED CASE HEARING REQUESTS; PRELIMINARY HEARING. (a) *The board may take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The board may issue a written order to:*

- (1) *grant the application;*
- (2) *grant the application with special conditions; or*
- (3) *deny the application.*

(b) *The board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with rules adopted under Section 36.415. The preliminary hearing may be conducted by:*

- (1) *a quorum of the board;*

(2) *an individual to whom the board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or*

(3) *the State Office of Administrative Hearings under Section 36.416.*

(c) *Following a preliminary hearing, the board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. If the board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the board may take any action authorized under Subsection (a).*

(d) *An applicant may, not later than the 20th day after the date the board issues an order granting the application, demand a contested case hearing if the order:*

(1) *includes special conditions that were not part of the application as finally submitted; or*

(2) *grants a maximum amount of groundwater production that is less than the amount requested in the application.*

SECTION 5. Section 36.406(d), Water Code, is amended to read as follows:

(d) The presiding officer may:

(1) convene the hearing at the time and place specified in the notice;

(2) set any necessary additional hearing dates;

(3) designate the parties regarding a contested application;

(4) establish the order for presentation of evidence;

(5) administer oaths to all persons presenting testimony;

(6) examine persons presenting testimony;

(7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;

(8) prescribe reasonable time limits for testimony and the presentation of evidence; ~~[and]~~

(9) exercise the procedural rules adopted under Section 36.415; *and*

(10) *determine how to apportion among the parties the costs related to:*

(A) *a contract for the services of a presiding officer; and*

(B) *the preparation of the official hearing record.*

SECTION 6. Section 36.410, Water Code, is amended to read as follows:

Sec. 36.410. *PROPOSAL FOR DECISION* ~~[REPORT]~~. (a) Except as provided by Subsection (e), the presiding officer shall submit a *proposal for decision* ~~[report]~~ to the board not later than the 30th day after the date *the evidentiary* ~~[a]~~ hearing is concluded.

(b) The *proposal for decision* ~~[report]~~ must include:

(1) a summary of the subject matter of the hearing;

(2) a summary of the evidence or public comments received; and

(3) the presiding officer's recommendations for board action on the subject matter of the hearing.

(c) The presiding officer or general manager shall provide a copy of the *proposal for decision* ~~[report]~~ to:

(1) the applicant; and

(2) each ~~[person who provided comments or each]~~ designated party.

(d) A party ~~[person who receives a copy of the report under Subsection (c)]~~ may submit to the board written exceptions to the *proposal for decision* ~~[report]~~.

(e) If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a), the presiding officer

shall determine whether to prepare and submit a *proposal for decision* ~~[report]~~ to the board under this section.

(f) The board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Section 36.409.

SECTION 7. Sections 36.412(a), (b), and (c), Water Code, are amended to read as follows:

(a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions ~~[or a rehearing before the board]~~ not later than the 20th day after the date of the board's decision.

(b) On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each ~~[person who provided comments or each]~~ designated party, not later than the 35th day after the date the board receives the request. A party to a contested hearing ~~[person who receives a certified copy of the findings and conclusions from the board]~~ may request a rehearing ~~[before the board]~~ not later than the 20th day after the date the board issues the findings and conclusions.

(c) A request for rehearing must be filed in the district office and must state the grounds for the request. If the original hearing was a contested hearing, the party ~~[person]~~ requesting a rehearing must provide copies of the request to all parties to the hearing.

SECTION 8. Section 36.415(b), Water Code, is amended to read as follows:

(b) In adopting the rules, a district shall:

(1) define under what circumstances an application is considered contested; ~~[and]~~

(2) limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a district's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public; *and*

(3) *establish the deadline for a person who may participate under Subdivision (2) to file in the manner required by the district a protest and request for a contested case hearing.*

SECTION 9. Section 36.416, Water Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) An administrative law judge who conducts a contested case hearing shall consider applicable district rules or policies in conducting the hearing, but the district deciding the case may not supervise the administrative law judge.

(e) A district shall provide the administrative law judge with a written statement of applicable rules or policies.

(f) A district may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

SECTION 10. Section 36.4165, Water Code, is amended to read as follows:

Sec. 36.4165. FINAL DECISION; CONTESTED CASE HEARINGS. *(a) In a proceeding for a permit application or amendment in which a district has contracted with the State Office of Administrative Hearings for a contested case hearing, the board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge [consistent with Section 2001.058, Government Code].*

(b) A board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, district rules, written policies provided under Section 36.416(e), or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

SECTION 11. The changes in law made by this Act apply only to an application for a permit or a permit amendment that is received by a groundwater conservation district on or after the effective date of this Act. An application for a permit or permit amendment that is received before the effective date of this Act is governed by the law in effect on the date the application is received, and that law is continued in effect for that purpose.

SECTION 12. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Passed by the House on May 5, 2015: Yeas 139, Nays 6, 2 present, not voting; passed by the Senate on May 20, 2015: Yeas 31, Nays 0.

Approved June 10, 2015.

Effective June 10, 2015.

**DEVELOPMENTALLY DISABLED OFFENDER PROGRAM
ESTABLISHED BY THE TEXAS DEPARTMENT OF CRIMINAL
JUSTICE**

CHAPTER 406

H.B. No. 2189

AN ACT

relating to a developmentally disabled offender program established by the Texas Department of Criminal Justice.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. This Act may be cited as the Radford Crocker Memorial Act.

SECTION 2. Subchapter B, Chapter 501, Government Code, is amended by adding Section 501.068 to read as follows:

Sec. 501.068. DEVELOPMENTALLY DISABLED OFFENDER PROGRAM. (a) In this section, "offender" has the meaning assigned by Section 501.091.

(b) The department shall establish and maintain a program for offenders:

(1) who are suspected of or identified as having an intellectual disability or borderline intellectual functioning; and

(2) whose adaptive functioning is significantly impaired.

(c) The program must provide an offender described by Subsection (b) with:

(1) a safe environment while confined; and

(2) specialized programs, treatments, and activities designed by the department to assist the offender in effectively managing, treating, or accommodating the offender's intellectual disability or borderline intellectual functioning.